



RECEIVED
DEQ - Valley
NOV 26 2018

To: _____
FILE: _____

COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

VALLEY REGIONAL OFFICE

P.O. Box 3000, Harrisonburg, Virginia 22801

(540) 574-7800 Fax (540) 574-7878

located at 4411 Early Road, Harrisonburg, VA

www.deq.virginia.gov

David K. Paylor
Director

Amy Thatcher Owens
Regional Director

Molly Joseph Ward
Secretary of Natural Resources

STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO HARRISONBURG PORT ROAD STATION TANKS 450, LLC FOR VALLEYS 21 Facility ID No. 6010023

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Harrisonburg Port Road Station Tanks 450, LLC, for the purpose of resolving certain violations of the State Water Control Law and the applicable regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
2. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
3. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
4. "Facility" means the physical location where the UST and/or UST system is installed and/or operated, known as Valleys 21, located at 701 Port Republic Road in

Harrisonburg, Virginia. The Facility's UST and/or UST system are owned and operated by Harrisonburg Port Road Station Tanks 450, LLC, and the Facility is further identified by UST Facility ID# 6010023.

5. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
6. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
7. "Owner" means any person who owns an UST system used for storage, use, or dispensing of regulated substances as defined in Va. Code § 62.1-44.34:8 and 9 VAC 25-580-10.
8. "Person" means an individual, trust, firm, joint stock company, corporation, including a government corporation, partnership, association, any state or agency thereof, municipality, county, town, commission, political subdivision of a state, any interstate body, consortium, joint venture, commercial entity, the government of the United States or any unit or agency thereof.
9. "Port Station" means Harrisonburg Port Road Station Tanks 450, LLC, a corporation authorized to do business in Virginia, and its affiliates, partners, and subsidiaries. Port Station is a "person" who owns the Facility.
10. "Regulated Substance" means an element, compound, mixture, solution or substance that, when released into the environment, may present substantial danger to the public health or welfare, or the environment, as defined in Va. Code § 62.1-44.34:8 and 9 VAC 25-580-10.
11. "Regulations" means the Underground Storage Tanks: Technical Standards and Corrective Action Requirements, 9 VAC 25-580-10 *et seq.*
12. "Release detection" means determining whether a release of a regulated substance has occurred from the UST system into the environment or into the interstitial space between the UST system and its secondary barrier or secondary containment around it.
13. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 9 (Va. Code §§ 62.1-44.34:8 through 62.1-44.34:9) of the State Water Control Law addresses Storage Tanks.
14. "Underground Storage Tank" or "UST" means any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is 10% or more beneath the surface of the ground as defined in Va. Code § 62.1-44.34:8 and 9 VAC 25-580-10.
15. "Va. Code" means the Code of Virginia (1950), as amended.

16. “VAC” means the Virginia Administrative Code.

17. “VRO” means the Valley Regional Office of DEQ, located in Harrisonburg, Virginia.

SECTION C: Findings of Fact and Conclusions of Law

1. Harrisonburg Port Road Station Tanks 450, LLC (Port Station) owns Valleys 21 (Facility) located at 701 Port Republic Road in Harrisonburg, VA. The Facility stores regulated substances in the form of gasoline and diesel in four USTs (Tank 1: 8,000 gallon gasoline UST, Tank 2: 10,000 gallon gasoline UST, Tank 3: 8,000 gallon gasoline UST and Tank 4: 10,000 gallon diesel UST) at the Facility.
2. On November 4, 2015, DEQ staff received a report of a release of 7,000 gallons of gasoline from Tank 3 at the above referenced facility.
3. Port Station became aware of an apparent sudden loss of product from Tank 3 on November 2, 2015. A failed tank tightness test on November 3, 2015 confirmed that a release had occurred. Prior to the November 3, 2015 test, the last passing leak detection test occurred on August 28, 2015.
4. 9 VAC 25-580-190 states that: “Owners and operators of UST systems must report to the board within 24 hours and follow the procedures in 9VAC25-580-210 for any of the following conditions: (...) 2. Unusual operating conditions observed by owners and operators (such as erratic behavior of product dispensing equipment, the sudden loss of product from the UST system ...”
5. 9 VAC 25-580-140.C.1 states that: “Tanks must be monitored at least every 30 days using one of the methods listed in subdivisions 4 through 8 of 9 VAC 25-580-160...”
6. On December 21, 2015, DEQ issued Notice of Violation (NOV) No. 15-12-VRO-004 to Port Station for alleged violations of the Regulations.
7. On January 7, 2016, DEQ staff met with facility representatives to discuss the Notice of Violation. Port Station agreed to submit a Site Characterization Report (SCR) and a Corrective Action Plan (CAP) as part of remediation at the facility.
8. On January 8, 2016, Port Station’s consultant, Triad Engineering, Inc. (TRIAD) submitted an Initial Abatement Report to DEQ. TRIAD recommended continued operation of the dual phase extraction system that had been in place since November 13, 2015.
9. On March 10, 2016, DEQ staff requested that Port Station submit a CAP by April 7, 2016.

10. On April 7, 2016, TRIAD submitted a CAP. On May 23, 2016 DEQ staff completed their review of the CAP and requested changes including addressing the planned discharge to surface water, the construction, operation, and maintenance of the bioreactor, additional details in all parts of the Plan and an application for a VPDES Permit. DEQ requested that Port Station submit a revised CAP by June 24, 2016.
11. On June 23, 2016, TRIAD submitted a revised CAP. TRIAD recommended continued operation of the dual phase extraction system coupled with a bioreactor to eliminate ethanol prior to discharge to surface waters. On August 25, 2016, DEQ staff approved the revised CAP.
12. Based on the results of the November 4, 2015 release report, subsequent information received on December 8, 2015, and the January 7, 2016 meeting, the Board concludes that Port Station has violated 9 VAC 25-580-190 and 9 VAC 25-580-140 as described in paragraphs C(2) through C(5), above.
13. In order for Port Station to return to compliance, DEQ staff and representatives of Port Station have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Port Station, and Port Station agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$11,375.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Port Station shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Petroleum Storage Tank Fund (VPSTF).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Port Station for good cause shown by Port Station, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Port Station admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Port Station consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Port Station declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Port Station to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Port Station shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Port Station shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Port Station shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;

- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

- 9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
- 10. This Order shall become effective upon execution by both the Director or his designee and Port Station. Nevertheless, Port Station agrees to be bound by any compliance date which precedes the effective date of this Order.
- 11. This Order shall continue in effect until:
 - a. the Director or his designee terminates the Order after Port Station has completed all of the requirements of the Order;
 - b. Port Station petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Port Station.

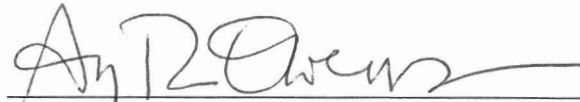
Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Port Station from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

- 12. Any plans, reports, schedules or specifications attached hereto or submitted by Port Station and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
- 13. The undersigned representative of Port Station certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Port Station to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Port Station.

14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

15. By its signature below, Port Station voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 26th day of January, 2017.
(2017)



Amy T. Owens, Regional Director
Department of Environmental Quality

------(Remainder of Page Intentionally Blank)-----

Harrisonburg Port Road Station Tanks 450, LLC voluntarily agrees to the issuance of this Order.

Date: 11-23-16 By: [Signature]
William B. Holtzman Manager
Harrisonburg Port Road Station Tanks 450, LLC

Commonwealth of Virginia
City/County of Shenandoah

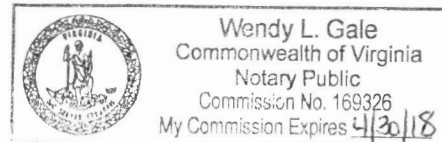
The foregoing document was signed and acknowledged before me this 23rd day of November, 2016, by William B. Holtzman who is Manager of Harrisonburg Port Road Station Tanks 450, LLC, on behalf of the corporation.

[Signature]
Notary Public

169326
Registration No.

My commission expires: 4/30/18

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

Port Station shall:

1. Implement the revised Corrective Action Plan as approved on August 25, 2016 in accordance with its terms and the schedule contained therein. Any changes to the revised CAP or the schedule must be approved by DEQ prior to implementation; and
2. Upon request of DEQ, modify the CAP as necessary to ensure adequate protection of human health and the environment as determined by the board.

DEQ Contact

Unless otherwise specified in this Order, Port Station shall submit all requirements of Appendix A of this Order to:

**VRO Enforcement Division
VA DEQ – Valley Regional Office
4411 Early Road
P.O. Box 3000
Harrisonburg, VA 22801
(540) 574-7800
(540) 574-7878**